

The Administrator signed the following rule on November 3, 2005, and we are submitting it for publication in the *Federal Register*. While we have taken steps to ensure the accuracy of this Internet version of the rule, it's not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming *Federal Register* publication. You can access the *Federal Register* on GPO's Web Site at: [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html). When using this site, note that "text" files may be incomplete because they don't include graphics. "PDF" files do include graphics.

**ENVIRONMENTAL PROTECTION AGENCY  
40 CFR Part 80**

**[OAR-2004-0029; FRL-7996-2]**

**RIN 2060-AK62**

**Revisions to the Requirements on Variability in the Composition of Additives**

**Certified Under the Gasoline Deposit Control Program; Final Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** On November 5, 2001, we published a direct final rule and concurrent notice of proposed rulemaking to revise the requirements on variability in the composition of additives certified EPA's Gasoline Deposit Control Program. We received adverse comments on two of the amendments contained in the direct final rule and proposed rule. Consequently, we issued a partial withdrawal notice on January 24, 2002, to withdraw the amendments that received adverse comments. This action

addresses the public comments received on the withdrawn amendments. We found the adverse comments on the withdrawn amendments unpersuasive. However, we agreed with one commenter's suggestion that additional clarifying language would be useful in one of the subject amendments to prevent any potential for misinterpretation. Consequently, today's action implements the previously withdrawn amendments with the addition of clarifying language. The changes to the regulatory requirements made by this action address additive manufacturer concerns that compliance with the previous requirements would be burdensome and difficult, while maintaining the emissions control benefits of the gasoline deposit control program.

**DATES:** This final rule is effective on **[insert date of publication in the Federal Register]**.

**ADDRESSES:** EPA established a docket for this action under Docket ID No. OAR-2004-0029.<sup>1</sup> All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some material is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center,

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<sup>1</sup> Paper copies of materials associated with the notice of proposed rulemaking that preceded this final rule are contained in the legacy docket. Legacy docket number A-2001-15.

EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, D.C. The Docket's Public Reading room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

Access to Rulemaking Documents Through the Internet:

Today's action is available electronically on the day of publication from EPA's Federal Register Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

**EPA Federal Register Web Site:**

<http://www.epa.gov/docs/fedrgstr/epa-air/>

(Either select a desired date or use the Search feature.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

**FOR FURTHER INFORMATION CONTACT:** Jeff Herzog, Assessment and Standards Division, Office of Transportation and Air Quality (Mail Code: AAFUEL), Environmental Protection Agency, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: (734) 214-4227, fax number: (734) 214-4816, e-mail address: herzog.jeff@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

**A. Does this Action Apply to Me?**

Entities potentially regulated by this action are those that manufacture gasoline deposit control (detergent) additives. Regulated categories and entities include:

Category	NAICS Code	SIC Code	Example of regulated entities
Industry	325998	2899	Gasoline deposit control additive manufacturers

- a. North American Industry Classification System (NAICS).
- b. Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 80.161(a), the detergent certification requirements in § 80.161(b), the program controls and prohibitions in § 80.168, and other related program requirements in Subpart G, title 40, of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

## **II. Overview of Action**

### *Background on the Gasoline Deposit Control Program:*

The accumulation of deposits in the engine and fuel supply systems of gasoline motor vehicles can significantly increase emissions of nitrous oxides (NO<sub>x</sub>), hydrocarbons (HC), and carbon monoxide (CO). Pursuant to the requirements of Section 211(l) of the Clean Air Act (CAA), EPA implemented a gasoline deposit control program which requires that all gasoline sold for use in motor vehicles in the United States (U.S.) contain additives that are effective in limiting the formation of such deposits (40 CFR Part 80). Specifically, EPA requires that deposit control additives be certified for their ability to control fuel injector deposits (FID) and intake valve deposits (IVD) in EPA-specified test procedures. All gasoline is required to contain a certified deposit

control (DC) additive at least at the lowest additive concentration (LAC) established during certification testing. The final requirements of EPA's gasoline deposit control program were published on July 5, 1996, and became effective August 1, 1997 (61 FR 35309).

Gasoline deposit control additives act to control deposits by both inhibiting the formation of deposits and by removing existing deposits. DC additives interfere with the formation of deposits by coating the surfaces within the fuel supply system so that deposits do not adhere readily and by keeping deposit precursors in solution so that they are carried through the combustion process. The process by which DC additives remove existing deposits depends on two functionalities, a detergent function to free the deposit from the surface and a carrier oil function to rinse the deposit-detergent amalgam off the surface. Many deposit control additives currently in use are composed of at least two separate components, one to provide the detergent action (the "detergent") and one to provide the carrier oil action. Polyetheramine-based detergent additive packages combine the detergent and carrier oil functions into a single chemical additive.

Variation in the composition of gasoline deposit control additives (DC additives) from one production batch to the next could have a substantial impact on their ability to control deposits, and on the emissions benefits of EPA's deposit control program. To ensure that the in-use performance of gasoline deposit control additives is consistent with that demonstrated in the certification testing, EPA implemented requirements limiting the

variability in the composition of additive production batches (from the composition reported in the additive's certification).

During development of EPA's deposit control additive program, automobile manufacturers urged EPA to implement a requirement to control combustion chamber deposits (CCD) as well as FID/IVD. The primary focus of automobile manufacturer concerns was the potential contribution to the formation of CCD from the use of high concentrations of some additives designed to control FID/IVD. Automobile manufacturers suggested that to limit the potential contribution of FID/IVD control additives to the formation of CCD, EPA should enact a maximum unwashed gum concentration for additized gasoline. Since gasoline unwashed gum level roughly correlates with detergent additive concentration, such a requirement would act to set a maximum allowed concentration for detergent additive packages. EPA deferred to enact a CCD control requirement due to lack of data with which to evaluate the potential benefits, costs, and appropriate control measures.

*Today's Action:*

The Chemical Manufacturers Association (CMA, which is now the American Chemistry Council) notified EPA that certain aspects of the requirements to limit variability in DC additive composition would be burdensome and difficult for additive manufacturers to comply with. CMA also stated that other related provisions needed to be

clarified. Accordingly, CMA filed a petition for review of these requirements<sup>2</sup> and entered into a process with EPA to evaluate alternatives to the requirements of concern. Through this process, a settlement agreement to resolve CMA's petition for review was reached with EPA. Consistent with this settlement agreement, we published a direct final rule on November 5, 2001 (66 FR 55885) and concurrent notice of proposed rulemaking (NPRM, 66 FR 55905) to revise the requirements on variability in the composition of additives under the gasoline deposit control program. We received adverse comments on two of the amendments contained in the direct final rule and NPRM. Consequently, we issued a partial withdrawal notice on January 24, 2002 (67 FR 3440) to withdraw the amendments on which we received adverse comments.

We have evaluated all of the comments received on the previously withdrawn amendments and find the adverse comments unpersuasive. However, we agree with one commenter's suggestion that additional clarifying language would be useful in one of the subject amendments to prevent any potential for misinterpretation. Therefore, today's action implements the previously withdrawn amendments with the addition of clarifying language similar to that suggested in the public comments. The change to the regulatory requirements made by this action addresses additive manufacturer concerns that compliance with the original requirements would be burdensome and difficult, while maintaining the emissions control benefits of the gasoline deposit control program.

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<sup>2</sup> Petition for review under the Clean Air Act's judicial review provisions, Chemical Manufacturers Association v. U.S. EPA, No. 96-1297, August 26, 1996.



### **III. What Revisions Does This Rule Make to the Requirements for Deposit Control Additives?**

The requirements on DC additives amended by today's action are contained in §§80.162(a)(3)(i)(B) and 80.162(a)(3)(ii) of Subpart G, title 40 of the CFR. The following sections contain a discussion of the amendments to these requirements, including: EPA's reasons for establishing them as we originally did, the changes to these requirements made by today's action, and our evaluation of the public comments on the proposed revisions to these requirements.

#### **A. Revisions to § 80.162(a)(3)(i)(B)**

The current regulatory requirements in § 80.162(a)(3)(i)(B) state that:

(i) The composition of a detergent additive reported in a single additive registration (and the detergent additive product sold under a single additive registration) may not:

\* \* \* \* \*

(B) Include a range of concentration for any detergent-active component such that, if the component were present in the detergent additive package at the lower bound of the reported range, the deposit control effectiveness of the additive package would be reduced as compared with the level of effectiveness demonstrated during certification testing.

EPA's goal in establishing this requirement in its current form was to ensure that each detergent-active component of a deposit control additive is present in additive production batches at no less the concentration needed to meet EPA's deposit control performance requirements. Consistent with the settlement agreement reached with CMA, we proposed to amend this requirement to make it clear that additive manufacturers could produce a DC additive package for sale that contained the component additives at a higher concentration than that used during additive certification testing.

In its comments on the NPRM, the Alliance of Automobile Manufacturers (AAM) stated that allowing the ratio of the different detergent-active components in a detergent additive package to vary could impact the deposit control efficacy of some or all of the components in the detergent additive package.<sup>3</sup> As an example, AAM stated that if the concentration of carrier oil is increased relative to the detergent component, a decrease in the detergency performance of the additive package would be expected. Based on this objection, AAM stated that EPA should not amend § 80.162(a)(3)(i)(B).

In a letter to EPA, the Fuel Additive Task Group within the American Chemistry Council (ACC) stated that there is no reason to expect that if one detergent-active component (such as a detergent) is present at the same concentration as in the test fuel used during additive certification testing while another detergent-active component (such as a carrier oil) is increased above the level present in the certification test fuel, there

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<sup>3</sup> EPA docket A-2001-15, docket item IV-D-03.

would be a decrease in detergency performance.<sup>4</sup> ACC stated that if this were to have any impact, it would be to increase detergency performance.

ACC stated that the proposed amendment to § 80.162(a)(3)(i)(B) was necessary because additive manufacturers must target a higher concentration of detergent-active components when producing additives for sale than the level specified in the additive's certification testing. ACC noted that otherwise, the variability inherent in the production process and in analytical measurements could result in a measured concentration of detergent-active components that is lower than the level reported in the additive's certification. ACC further stated that since EPA does not permit variability below the concentration of detergent-active components reported in the certification, additive manufacturers need the flexibility to produce products having a higher concentration of these components.

We believe that AAM's objections to the amendment to § 80.162(a)(3)(i)(B) are unfounded. AAM presented no data or scientific rationale to support its concerns. We agree with ACC's assertion that there is no reason to expect a decrease in FID/IVD control efficacy if the concentration of one detergent-active component is increased above the level present in the test fuel used during additive certification testing, while another detergent-active component is present at the same concentration in the certification test fuel. We are aware that an increase in the concentration of certain

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<sup>4</sup> EPA docket A-2001-15, docket item IV-G-01.

components of a detergent additive package (such as mineral-based carrier oils) may tend to increase the contribution of such additives to the formation of CCD. However, for the reasons noted previously, EPA continues to believe that there is insufficient basis to support the development of a combustion chamber deposit control requirement at this time. Therefore, we believe that there is insufficient justification to implement a cap on the concentration of the components in a DC additive package based on the potential that higher concentrations may contribute to the formation of CCD.

We agree with ACC's statement that additive manufacturers must be allowed to increase the concentration of detergent-active components in additive production batches in order to comply with EPA's requirement that all detergent-active components must be present at least at the concentration present in the certification test fuel. Thus, today's action implements the proposed change to make it clear that additive manufacturers have this flexibility.

**B. Revisions to § 80.162(a)(3)(ii):**

The current requirements in § 80.162(a)(3)(ii) state that:

(ii) The identity or concentration of non-detergent-active components of the detergent additive package may vary under a single registration, provided that the range of such variation is specified in the registration and that such

variability does not reduce the deposit control effectiveness of the additive package as compared with the level of effectiveness demonstrated during certification testing.

EPA's goal in establishing this requirement in its current form was to ensure that the effectiveness of deposit control additives is not adversely impacted by variability in the composition of non-detergent-active components.

Non-detergent-active additives include corrosion inhibitors, anti-oxidation additives, anti-static additives, and metal de-activators. When necessary, such additives are added separately to gasoline. Additive manufacturers need to ensure the compatibility of their additives with the range of in-use additives during the development of a DC additive package (and as new additives are introduced into the market). When it is feasible to include the needed non-detergent-active additives in the detergent additive package, a batch of finished gasoline need be injected with additives only once. Limiting the number of separate additizations needed can result in a reduction in overall additive costs. DC additive manufacturers commonly switch the non-detergent-active components in their additive package depending on market conditions.

In its petition for review, CMA requested that § 80.162(a)(3)(ii) be revised by deleting: "the range of such variation is specified in the registration and that." CMA stated that there is no need to report the range of variation in the identity or concentration

of non-detergent-active components since such variation does not impact the efficacy of the deposit control additive package. CMA stated that restricting the additive manufacturer's flexibility to switch the non-detergent-active components of their DC additive package would increase manufacturing costs, and potentially cause supply problems.

In the NPRM/DFRM, we agreed with CMA that maximizing additive manufacturer flexibility in the choice of non-detergent-active components would reduce the burden of compliance on additive manufacturers and would not jeopardize the emissions benefits of the gasoline deposit control additive program. We also agreed that differences in the composition and concentration of non-detergent-additive components would have no impact on the efficacy of the deposit control additive package provided that such differences do not impact the concentration of detergent-active components in the package. Furthermore, we stated that there would continue to be adequate regulatory requirements to prevent such an occurrence, and that the proposed amendment would not impact the environmental benefits of the gasoline deposit control program.

In its comments on the NPRM, AAM objected to the proposed amendment to § 80.162(a)(3)(ii) based on similar concerns to those AAM expressed regarding the proposed revision to § 80.162(a)(3)(i)(B). Specifically, AAM stated that changes to non-detergent-active components in a detergent additive package could have an adverse impact on deposit control efficacy. In its comments on the NPRM, Chevron Oronite

stated that all carrier oils used in detergent additive packages have an impact on deposit control efficacy and that EPA should not allow carrier oils to be treated as non-detergent-active components. Chevron Oronite stated that EPA should therefore not permit the switching of carrier oils under the same additive certification or a reduction in the concentration of carrier oils in additive production batches below the concentration used during certification testing. Chevron Oronite stated that it supported the proposed amendment as it would apply to non-detergent-active components.

After EPA's withdrawal of the proposed amendments to §§80.162(a)(3)(i)(B) and 80.162(a)(3)(ii) due to the receipt of adverse comments, ACC convened its Fuel Additive Task Group (which includes Chevron Oronite) to discuss how these adverse comments might be resolved. In a letter to EPA, ACC stated that EPA could address the concern voiced in the comment from Chevron Oronite by issuing the clarifying interpretation that carrier oils may not be listed as non-detergent active unless the additive certifier has data to support the assertion that the carrier oil is not detergent-active.

We are aware of no data or other evidence to suggest that non-detergent-active additives present in a DC additive package (or added to gasoline separately) influence the package's deposit control efficacy. Hence we see no compelling reason to limit the flexibility of additive manufacturers to make changes in the composition or concentration to the non-detergent-active components of their DC additive packages. Existing

safeguards in the regulatory requirements will ensure that variability in non-detergent-active components does not reduce the in-use concentration of detergent-active components compared to that in the certification test fuels. Therefore, we believe that the proposed amendment to § 80.162(a)(3)(ii) would not adversely impact deposit control efficacy or the emissions benefits of the gasoline deposit control program.

We agree with the suggestion from ACC that adding clarifying language to the regulatory text regarding when a carrier might be considered non-detergent-active would be useful in preventing potential misunderstandings during DC additive certification. When a DC additive package contains a separate carrier oil, it is typically a necessary component with respect to the package's deposit control efficacy. In fact, we are aware of no instance where such a carrier oil might reasonably be considered non-detergent-active. Therefore, today's action adds language to the proposed regulatory text to make it clear that all carrier oils present in the detergent certification test fuel will be considered as detergent active by EPA unless the additive manufacturer provides data to substantiate the carrier oil is non-detergent-active.

Solvents such as xylene are sometimes used to dilute a DC additive package to improve its cold-flow performance during the winter.<sup>5</sup> Both solvents and carrier oils

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<sup>5</sup> In such cases the additive treatment rate is increased to ensure that the detergent-active components are present in the additized gasoline at least at the concentration established during certification testing.



may be composed of nothing more than a specific petroleum boiling fraction.<sup>6</sup> However, such solvents are easily differentiated from carrier oils based on their boiling characteristics. Carrier oils must have a high boiling range to provide the washing action for which they are intended, while cold-flow solvents must have a substantially lower boiling range in order to provide the intended improvement in cold-flow performance. Therefore, we believe that there is no potential for additive manufacturers to confuse the two when reporting the component parts of their DC additive package at the time of certification. A high boiling fraction oil will always be considered as a carrier oil by EPA, and as such be presumed to be detergent active unless the additive manufacturer provides data to substantiate that the oil is non-detergent active. EPA will scrutinize such data on a case-by-case basis.

Consistent with the above discussion, today's action amends § 80.162(a)(3)(ii) to read as follows:

(ii) The identity or concentration of non-detergent-active components of the detergent additive package may vary under a single registration provided that such variability does not reduce the deposit control effectiveness of the additive package as compared with the level of effectiveness demonstrated during certification testing.

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<sup>6</sup> Synthetic carrier oils have come to replace mineral-based carrier oils in many DC additive packages. Synthetic carrier oils possess high boiling characteristics similar to those for mineral-based carrier oils.

(A) Unless the additive manufacturer (or other certifying party) provides EPA with data to substantiate that a carrier oil does not act to enhance the detergent additive package's ability to control deposits, any carrier oil contained in the detergent additive package, whether petroleum-based or synthetic, must be treated as a detergent-active component in accordance with the additive compositional reporting requirements in § 80.162 (a)(2). Such data should be should be sent by certified mail to the address specified in § 80.174(b).

#### **IV. What Are the Economic and Environmental Impacts?**

The revisions made by today's notice will reduce the burden of compliance with the gasoline deposit control additive program while not impacting the environmental benefits of the program.

#### **V. Statutory and Executive Order Reviews**

##### *A. Executive Order 12866: Regulatory Review*

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as one that is likely

to result in a rule that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*B. Paperwork Reduction Act*

This action does not impose a new information collection burden under the

provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Office of Management and Budget (OMB) previously approved the information collection requirements (ICR) of EPA's Gasoline Deposit Control Additive Program contained in 40 CFR Part 80 under the provisions of the Paperwork Reduction Act, and has assigned OMB control number 2060-0275 to these information collection requirements (EPA ICR No. 1655.04). Today's rule does not result in a change in the requirements contained in the existing ICR for EPA's Gasoline Deposit Control Additive Program. No new information collection requirements or increase in the information collection burden will result from the implementation of today's action.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The

OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions. For the purpose of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory

flexibility analysis is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Today’s rule simplifies the requirements for additive manufacturers under the gasoline deposit control program and does not impose any significant new requirements. The regulatory changes made by today’s action will reduce the burden of compliance for all regulated parties. We have therefore concluded that today’s final rule will relieve regulatory burden for all small entities. Therefore, EPA determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA

rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any State, local or tribal governments. Therefore, nothing in the rule will significantly or uniquely affect

small governments.

We have determined that this rule does not contain a Federal mandate that may result in estimated expenditures of more than \$100 million to the private sector in any single year. The amendments contained in this final rule simplify the requirements under the gasoline deposit control program, and do not impose any significant new requirements. Therefore, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of



government, as specified in Executive Order 13132. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. Today's action amends the reporting requirements for manufactures of deposit control additives regarding the allowed variability in the composition of additives certified under EPA's gasoline deposit program. These amendments do not impose any new requirements and will not result in any additional costs for Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*

Executive Order 13045, "Protection of Children from Environmental Health

Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The revisions made by today’s notice will reduce the burden of compliance with the gasoline deposit control additive program while not impacting the environmental benefits of the program.

*H. Executive Order 13211: Actions that Significantly Affect Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive

Order 12866.

*I. National Technology Transfer and Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective **[insert date of publication]**.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: November 3, 2005

Stephen L. Johnson,  
Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is to be amended as follows:

PART 80--- [AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.162 is amended by revising paragraph (a)(3)(i)(B) to read as follows:

\* \* \* \* \*

(B) Include a range of concentration for any detergent-active component such that, if the component were present in the detergent additive package at the lower bound of the reported range, the deposit control effectiveness of the additive package would be reduced as compared with the level of effectiveness demonstrated during certification testing. Subject to the foregoing constraint, a detergent additive product sold under a particular additive registration may contain a higher concentration of the detergent-active component(s) than the concentration(s) of such component(s) reported in the registration for the additive.

\* \* \* \* \*

3. Section 80.162 is amended by revising paragraph (a)(3)(ii) and adding paragraph (a)(3)(ii)(A) to read as follows:

\* \* \* \* \*

(ii) The identity or concentration of non-detergent-active components of the detergent additive package may vary under a single registration provided that such variability does not reduce the deposit control effectiveness of the additive package as compared with the level of effectiveness demonstrated during certification testing.

(A) Unless the additive manufacturer (or other certifying party) provides EPA with data to substantiate that a carrier oil does not act to enhance the detergent additive package's ability to control deposits, any carrier oil contained in the detergent additive package, whether petroleum-based or synthetic, must be treated as a detergent-active component in accordance with the additive compositional reporting requirements in § 80.162 (a)(2). Such data should be should be sent by certified mail to the address specified in § 80.174(b).

\* \* \* \* \*